

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

BOBBY LEE JEFFRIES v. TONY PARKER, WARDEN

**Direct Appeal from the Circuit Court for Lauderdale County
No. 6196 Joseph H. Walker, III, Judge**

No. W2008-00036-CCA-R3-HC - Filed June 4, 2008

The petitioner, Bobby Lee Jeffries, appeals from the trial court's denial of his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petitioner has failed to assert a ground that would entitle him to habeas corpus relief. Accordingly, we affirm the trial court's dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed Pursuant
to Rule 20, Rules of the Court of Criminal Appeals**

ALAN E. GLENN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J.C. McLIN, JJ., joined.

Bobby Lee Jeffries, Henning, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Rachel E. Willis, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

We derive the factual and procedural history of this case from this court's opinion on post-conviction review:

On November 28, 1984, Petitioner was convicted by a jury of two counts of armed robbery, was found to be a habitual criminal, and was sentenced to life imprisonment. This Court confirmed Petitioner's conviction on October 9, 1985. The Tennessee Supreme Court denied Petitioner's application for permission to appeal on January 21, 1986.

On June 7, 1989, the United States District Court for the Western District of Tennessee granted Petitioner's petition for habeas corpus relief as to his 1984 habitual criminal conviction. His life sentence as a habitual criminal was vacated and he was resentenced by the trial court to two fifteen (15) year sentences to be served

concurrently for the two armed robbery convictions. This court affirmed the trial court's judgment on February 27, 1991.

Bobby Lee Jeffries v. State, No. 02C01-9607-CR-00216, 1997 WL 585747, at *1 (Tenn. Crim. App. Sept. 23, 1997).

On December 20, 2007, the petitioner filed a petition for habeas corpus relief in the Lauderdale County Circuit Court. As grounds for relief, he alleged that the trial court lost its jurisdiction over his case when it sentenced him and that the trial court's enhancement of his sentences and imposition of consecutive sentencing contravened Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). The trial court summarily dismissed his petition, holding that the trial court had jurisdiction to impose the petitioner's sentences and that Blakely error is not cognizable in a habeas corpus proceeding.

Whether the petitioner is entitled to habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007); Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). As such, our review is *de novo* with no presumption of correctness given to the trial court's findings and conclusions. Id.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner's term of imprisonment has expired. Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). The judgment of a court of general jurisdiction is conclusive and presumed to be valid, and such a judgment can only be impeached if the record affirmatively shows that the rendering court was without personal or subject matter jurisdiction. Archer v. State, 851 S.W.2d 157, 162 (Tenn. 1993). A void, as opposed to a voidable, judgment is "one that is facially invalid because the court did not have the statutory authority to render such judgment." Summers, 212 S.W.3d at 256 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Furthermore, when "a habeas corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing." Summers, 212 S.W.3d at 260 (citing Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005)).

The petitioner argues that the trial court "lost" jurisdiction over his case when it dismissed the jury after it returned the guilty verdicts. As we understand, he contends that his Sixth Amendment right to a jury trial includes the right to be sentenced by the jury. However, he has waived this issue for our consideration by citing no authority in support of his claim. See Tenn. Ct. Crim. App. R. 10(b). He also argues that the trial court enhanced his sentences and ordered them to run consecutively in contravention of Blakely, which requires that any fact, other than that of a prior conviction, used to enhance a defendant's sentence be proven to a jury beyond a reasonable doubt. This claim is without merit because his case became final on direct review before Blakely was decided. "Apprendi/Blakely type issues regarding allocating fact-finding authority to judges

during sentencing are not in the narrow class of procedural rules that apply retroactively.” Ulysses Richardson v. State, No. W2006-01856-CCA-R3-PC, 2007 WL 1515162, at *2 (Tenn. Crim. App. May 24, 2007), perm. to appeal denied (Tenn. Sept. 17, 2007). Moreover, even a valid Blakely claim renders a conviction voidable, not void, and is thus non-cognizable in habeas corpus review. Richardson, 2007 WL 1515162, at *3. Because the petition did not state a cognizable claim for habeas corpus relief, summary dismissal by the trial court was proper.

When an opinion would have no precedential value, the Court of Criminal Appeals may affirm the judgment or action of the trial court by memorandum opinion when the judgment is rendered or the action taken in a proceeding without a jury and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. See Tenn. Ct. Crim. App. R. 20. We conclude that this case satisfies the criteria of Rule 20. Accordingly, it is ordered that the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ALAN E. GLENN, JUDGE